

**COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF TELECOMMUNICATIONS AND ENERGY**

**FIRST SET OF INFORMATION REQUESTS OF NSTAR GAS COMPANY TO THE
DIVISION OF PIPELINE ENGINEERING AND SAFETY**

D.T.E. 05-36

November 16, 2005

Persons Responsible: Christopher Bourne

Information Request NSTAR 1-26

Please describe all data, facts, reports, studies, documents or other materials relied upon by the Division to establish its proposed fine of \$200,000 in this case and explain how the Division derived this fine amount based on this information.

Response

The Division relied upon evidence and information gathered during its investigation of the Incident at 65 Main Street, Hopkinton, including, but not limited to:

1. Records provided by NSTAR Gas in response to requests made to NSTAR by the Division's investigator dated June 16, 2003 and July 7, 2003;
2. Statements by NSTAR Gas personnel and other persons obtained by the Pipeline Division investigator and municipal and other state officials contained in the Pipeline Division's Incident Report of November 6, 2003;
3. Reports from other government agencies, including the Hopkinton Fire Department contained in the Pipeline Division's Incident Report of November 6, 2003;
4. Analysis of Jurisdictional Gas Piping and Appurtenances Removed From 65 Main Street, Hopkinton by Massachusetts Materials Research, Inc ("MMR");
5. Opinion letters issued by the U.S. Department of Transportation/Office of Pipeline Safety (OPS), including, but not limited to, those provided in response to information requests NSTAR 1-13, 1-28, and 1-31.
6. 49 U.S.C. §§ 60100, *et. seq.*;
7. Guidelines for States Participating in the Pipeline Safety Program;
8. 220 C.M.R. § 69.09(2): Civil Penalties.

9. At the time of the incident, G.L. c. 164, § 105A, provided that an operator who has violated the applicable safety codes “shall be subject to a civil penalty not to exceed \$1,000 for each violation for each day that the violation persists; provided, however, that the maximum civil penalty shall not exceed \$200,000 for any related series of violations.” G.L. c. 164, § 105A.

As required by federal statute, the Division’s certification agreement with the United States Department of Transportation, and state regulations, the Director considered the following factors in determining the amount of the civil penalty. These factors, which are listed in 220 C.M.R. § 69.09(2) include:

- “a) the nature, circumstances and gravity of the violation;
- b) the degree of the respondent's culpability;
- c) the respondent's history of prior offenses;
- d) the respondent's ability to pay;
- e) any good faith shown by the respondent in attempting to achieve compliance, after notification of a violation;
- f) the appropriateness of the penalty to the size of the business of the respondent;
- g) the effect on the respondent's ability to continue in business; and
- h) such other matters as justice may require.”

220 C.M.R. § 69.09(2).

The Division considered the nature, circumstances and gravity of the violation to be severe for a number of reasons, including but not limited to, the period of the operator’s noncompliance with the minimum federal safety regulations provided in 49 C.F.R. §§ 192.723 and 192.481 since their enactment in 1970, and especially after an October 7, 1996 letter to all operators indicating the need for operators to comply with 49 C.F.R. § 192.723(b)(2) or request a waiver. Please see response to information request NSTAR 1-13. NSTAR’s lack of response to the requirements set forth at 49 C.F.R. § 192.723(b)(2), both before and after the incident, show a lack of good faith.

The number of visits made by NSTAR service personnel to the basement of the dwelling prior to the incident and the condition of the basement of the dwelling and NSTAR equipment prior to the incident were also considered by the Division. In fact, a portion of NSTAR’s service line, recovered by the Division, had corroded to a point that pieces of metal had become friable and severely corroded. MMR’s analysis verified the condition of that section of the service line.

In addition, NSTAR was unable to provide the Division with documentation substantiating the Maximum Allowable Operation Pressure (“MAOP”) of the service line as required by federal law. NSTAR Gas has used pressure testing as a means to documenting the MAOP of its pipelines.

A March 9, 1998 letter to Thomas Valenti, Baltimore Gas and Electric Company, from Cesar DeLeon, OPS, states in the relevant part:

“In Part 192, the recordkeeping requirements for pressure tests are in § 192.517. These requirements do not apply to pressure tests done under §§ 192.511 and 192.513. Section 192.619 does not include a separate recordkeeping requirement for pressure tests.

....

However, the MAOP of pipelines tested under §§ 192.511 and 192-513 is governed by § 192.619. And, for plastic pipe or steel pipe operated at 100 psig or more, § 192.619(a)(2) bases M.AOP on test pressure. Because § 192.619(a)(2) is a federal pipeline safety standard, operators are obligated by law to provide, upon request of government inspectors, credible information to demonstrate compliance with § 192.619(a)(2). This information would include evidence of the test pressure used to calculate MAOP.”

Please see response to information request Exhibit NSTAR 1-28(A).

NSTAR personnel visited the basement of the dwelling at 65 Main Street, Hopkinton ten times in the 12 months prior to the incident. NSTAR’s service department records did not indicate that the interior portion of the service line had been inspected for corrosion since October 8, 1974. NSTAR’s service department records do not indicate the interior portion of the service lines has been leak surveyed during any annual leak survey of the business district. NSTAR is obligated to comply with the existing minimum federal safety regulations. In addition, NSTAR was specifically made aware by the Director of the Division of Pipeline Safety and Engineering in October, 1996, that the Office of Pipeline Safety of the United States Department of Transportation requires that inside piping be inspected for atmospheric corrosion and that leakage surveys be performed, pursuant to federal regulations. The Division thus considered NSTAR’s degree of culpability to be high.

NSTAR is one of the largest gas companies in Massachusetts; therefore, the Division considered the amount of the penalty appropriate to the size of NSTAR’s business. In NSTAR Gas Company’s 2002 and 2004 Annual Reports filed with the Department, NSTAR Gas Company reported its total utility operating income to be \$ 26,107,561 and \$ 38,512,879, respectively, attached as Exhibit NSTAR 1-26(A). While the civil penalty would not affect NSTAR’s ability to stay in business, the penalty was established at \$200,000 to ensure NSTAR will maintain adequate records and conduct as required by law.

Please see response to information request NSTAR 1-27.